

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

HEATHER NELSON,

Plaintiff,

v.

Case No.: 11-cv-307

SANTANDER CONSUMER USA, INC.,
PATRICK K. WILLIS CO., INC.,
d/b/a AMERICAN RECOVERY SERVICE,
ASSETSBIZ CORP. d/b/a ABC RECOVERY,

Honorable Barbara B. Crabb

Defendants.

**DEFENDANT SANTANDER CONSUMER USA, INC.'S
STATEMENT OF PROPOSED FINDINGS OF FACT IN SUPPORT
OF ITS PARTIAL MOTION FOR SUMMARY JUDGMENT**

Defendant Santander Consumer USA, Inc. ("Santander"), submits the following Statement of Proposed Findings of Fact in support of its Partial Motion for Summary Judgment:

JURISDICTION

1. The First Claim for Relief set out in Plaintiff Heather Nelson's ("Plaintiff") Second Amended Complaint asserts a claim for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq. (Second Am. Comp., attached hereto as Ex. A, at ¶¶ 59-63.)

2. The Third Claim for Relief set out in Plaintiff's Second Amended Complaint asserts a claim for violations of the Federal Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (Second Am. Comp., Ex. A, at ¶¶ 69-73.)

3. Because Plaintiff asserts claims under federal statutes, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1692k(d).

THE PARTIES

4. Plaintiff is an individual, and resides in Sun Prairie, Wisconsin. (Second Am. Comp., Ex. A, at ¶ 3.)

5. Santander is an automobile finance company, with its principal place of business in Dallas, Texas. Santander's principal business is originating automobile retail installment sales contracts on direct and indirect lending program platforms. (Answer to Second Am. Comp., attached hereto as Ex. B, at ¶ 6; Declaration of Wayne Nightengale dated January 7, 2013 ("Nightengale Dec."), attached hereto as Ex. C, at ¶ 5.)

THE DISPUTE & CONTEXT OF THE DISPUTE

6. In 2005 Plaintiff purchased a 2004 Dodge Ram Truck and a 2005 Town & Country Minivan for personal use. (Second Am. Comp., Ex. A, at ¶ 14.)

7. In 2007, plaintiff refinanced both loans with HSBC. (Second Am. Comp., Ex. A, at ¶ 16.)

8. Santander became the creditor on the loan secured by Plaintiff's minivan in March 2010, when it acquired the Loan Repayment and Security Agreement from HSBC. (Nightengale Dec., Ex. C, at ¶¶ 5-6, 10.)

9. Santander became the creditor on the loan secured by Plaintiff's truck in August 2010, when it acquired that Loan Repayment and Security Agreement from HSBC. (Nightengale Dec., Ex. C, at ¶¶ 5, 8, 10.)

10. In about March 2010, Santander began the purchase of HSBC's entire auto-finance business, and its entire portfolio of existing auto-finance loans, without regard to whether the loans were current or in default. (Nightengale Dec., Ex. C, at ¶ 6.)

11. HSBC's auto-finance business included HSBC Auto Finance Inc., and HSBC Auto Finance Inc.'s affiliates, including HSBC Auto Credit Inc., and HSBC Auto Accounts Inc. (collectively "HSBC"). (Nightengale Dec., Ex. C, at ¶ 6.)

12. Santander's purchase of HSBC's auto-finance business was completed in August 2010. (Nightengale Dec. at ¶ 8.)

13. Santander also acquired certain of HSBC's facilities through the acquisition, and Santander assumed control of those facilities in March of 2010. (Nightengale Dec., Ex. C, at ¶ 9.)

14. Santander made individual offers to retain HSBC's former employees to continue working at those facilities. (Nightengale Dec., Ex. C, at ¶ 9.)

15. Santander does not operate as a third-party debt collector (i.e., collecting someone else's debt or the debt "of another") for the HSBC accounts, but purchased the Chrysler Minivan Account and Plaintiff's Dodge Truck Accounts as its own obligations. (Nightengale Dec., Ex. C, at ¶ 11.)

16. Plaintiff asserts a variety of claims against Santander and other defendants arising out of actions she alleges were taken in an effort to collect payments that were due under the two automobile finance agreements described above. (Second Am. Comp., Ex. A, at Introduction.)

Dated: January 7, 2013

Santander Consumer USA, Inc.

s/ David Z. Smith

David. Z. Smith

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CERTIFICATE OF SERVICE

I, David Z. Smith, hereby state that on January 7, 2013, I electronically filed *Defendant Santander Consumer USA, Inc. 's Statement of Proposed Findings of Fact in Support of Its Partial Motion for Summary Judgment* with the Clerk of the Court using the ECF system, which will send notification to all parties of record.

By: /s/ David Z. Smith

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